

PD6 Exh 1

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE NORTHERN DISTRICT OF OHIO  
3           EASTERN DIVISION

4                   -   -   -

5  
6           IN RE:    NATIONAL                         :   HON. DAN A.  
7           PRESCRIPTION OPIATE                   :   POLSTER  
8           LITIGATION                               :     
9   :   MDL NO. 2804  
10          APPLIES TO ALL CASES                   :     
11   :   CASE NO.  
12   :   17-MD-2804  
13   :     
14   :   

15                               - HIGHLY CONFIDENTIAL -  
16          SUBJECT TO FURTHER CONFIDENTIALITY REVIEW  
17                               VOLUME I

18                   -   -   -

19                   May 16, 2019

20                   -   -   -

21                   Videotaped deposition of  
22          DR. SETH B. WHITELOW, taken pursuant to  
23          notice, was held at the offices of Golkow  
24          Litigation Services, One Liberty Place,  
25          1650 Market Street, Philadelphia,  
26          Pennsylvania beginning at 9:18 a.m., on  
27          the above date, before Michelle L. Gray,  
28          a Registered Professional Reporter,  
29          Certified Shorthand Reporter, Certified  
30          Realtime Reporter, and Notary Public.

31                   -   -   -

32                   GOLKOW LITIGATION SERVICES  
33          877.370.3377 ph | 917.591.5672 fax  
34                   deps@golkow.com

1           A.       I prepared both, both on my  
2       own and with assistance from counsel.

3           Q.       Which counsel did you meet  
4       with to prepare for today's deposition?

5           A.       Certainly the three  
6       gentlemen that are here. And again, I  
7       don't have a complete list of everybody  
8       else I've met with.

9           Q.       Do you recall how many  
10      meetings you had with counsel in  
11      preparation for today's deposition?

12          A.       My recollection we were --  
13      there were seven, somewhere between seven  
14      and nine, something like that.

15          Q.       And about how long were  
16      these meetings?

17          A.       They varied in length from,  
18      you know, half a day to a couple hours.

19          Q.       So in preparation for  
20      today's deposition, you mentioned a few  
21      things you reviewed. You reviewed your  
22      report, you reviewed some of the  
23      documents that you cite. What -- what  
24      other materials did you review in

1 preparation for today's deposition?

2 A. I reviewed the new --  
3 obviously you have my supplemental  
4 report. I reviewed the new developments  
5 that had come out since I actually issued  
6 the report. And also certain documents  
7 are listed in there as well. Beyond that  
8 I'm not sure -- I think that's the  
9 complete universe to the best of my  
10 recollection.

11 Q. Did you review any documents  
12 that are not listed in your report or  
13 your supplemental report?

14 A. Not that I --

15 MR. BOGLE: Object to form.

16 THE WITNESS: Not that I  
17 recall.

18 BY MR. EPPICH:

19 Q. Now, you list quite a few  
20 documents in your reports. How did you  
21 choose which documents to review,  
22 particularly from the defendants?

23 A. I followed the same uniform  
24 approach, as I said to you before. I

1 followed the same uniform approach that I  
2 do when I do any kind of a compliance  
3 investigation, or compliance assessment.

4 I use the federal sentencing  
5 guidelines as my sort of framework. And  
6 I asked counsel, in this case, serving  
7 like I would a client, I need documents  
8 in these particular areas, could you  
9 please provide me with information that  
10 relates to these particular areas. And  
11 they provided me with those documents.

12 If I was unclear or I didn't  
13 get exactly -- it is an iterative  
14 process. So if I was unclear or I didn't  
15 get what I was looking for, I asked  
16 further follow-up questions. I asked for  
17 further information. Once I got that  
18 information, I then reviewed it.

19 Q. What were the original  
20 categories of documents that you  
21 requested from plaintiffs' counsel?

22 A. We can turn to my report and  
23 we can go down the eight elements of the  
24 federal sentencing guidelines if you'd

1     like.

2                   Q.     We can do that in a few  
3     minutes. But sitting here, just now, do  
4     you recall any of the categories of  
5     documents?

6                   MR. BOGLE: If you need to  
7     refer to your report, you can.

8                   THE WITNESS: I'm going to  
9     refer to my report. Since he  
10    wants to go down the categories,  
11    let's go down the categories.

12    BY MR. EPPICH:

13                  Q.     Why don't we go through that  
14    later. I'll strike the question.

15                         Did you review any  
16    deposition transcripts?

17                  A.     Yes, sir, I did.

18                  Q.     Which -- did you read the  
19    entire transcripts or just portions of  
20    the transcripts?

21                  A.     Depended on the witnesses.  
22    I read some completely from beginning to  
23    end and I read some that -- substantial  
24    portions.

1 Q. You are a licensed food and  
2 drug attorney?

3 A. I practice my specialty is  
4 food and drug.

5 Q. And you have a doctorate in  
6 health law?

7 A. I do, from Widener  
8 University as we just discussed.

9 Q. The next sentence reads,  
10 "His forte is designing, building and  
11 running life science compliance programs  
12 from a 'blank sheet of paper.'"

13 Did I read that correctly?

14 A. You did.

15 Q. And is that statement  
16 accurate?

17 A. Yeah, I think it's an  
18 accurate statement.

19 Q. The statement does not  
20 include the words wholesale  
21 pharmaceutical distributors, correct?

22 A. No, sir, it does not.

23 Q. It does not include DEA  
24 compliance programs, correct?

1           A.       DEA compliance programs, as  
2       we will -- as noted in my report, are a  
3       subset of the larger corporate compliance  
4       program.

5                       So you have a corporate  
6       compliance program. You have an  
7       anti-diversion program under that. You  
8       have a suspicious order monitoring  
9       program under that.

10                      So it's all sort of a  
11       subsumed in the bigger picture. We are  
12       talking compliance, we are talking  
13       compliance with all laws and regulations,  
14       the systems and processes designed at the  
15       corporate level.

16           Q.       Have you designed a DEA  
17       compliance program before?

18           A.       I have not designed a DEA  
19       compliance program in the sense of a  
20       controlled substances. I have designed a  
21       sample and sample accountability PDMA  
22       compliance programs. As you know, those  
23       are substantially similar programs. You  
24       need to know who you are selling -- you



1 know, providing samples to, that they're  
2 qualified to receive the samples, that  
3 the inventories and samples that you  
4 deliver are in fact given to sales reps,  
5 are in fact -- are passed out to  
6 healthcare providers, are in fact  
7 accounted for. Any elements of diversion  
8 on the other hand are then reported  
9 appropriately to the appropriate  
10 agencies, et cetera. So yes, I have done  
11 that.

12 Q. Now, do sample and sample  
13 capacity programs and PDMA compliance  
14 programs, do -- do those -- do those  
15 programs use 21 U.S.C. 823?

16 MR. BOGLE: Object to form.  
17 You can answer if you understand.

18 THE WITNESS: I'm not sure I  
19 understand the question that he's  
20 asking.

21 BY MR. EPPICH:

22 Q. Well, do those programs, are  
23 they governed by the Controlled  
24 Substances Act and its affiliated

1 regulations?

2 A. Only if you're dropping  
3 samples under a -- only if you're  
4 dropping controlled substances samples,  
5 then yes, it would apply. If you're not  
6 dropping controlled substances samples,  
7 the answer is no, it would not apply.

8 Q. Do either of those programs  
9 use suspicious order monitoring programs  
10 as defined by the Controlled Substances  
11 Act and its affiliated regulations?

12 A. Again, back to my original  
13 answer, if you're dropping controlled  
14 substances samples, you would need to  
15 comply with the suspicious order  
16 monitoring requirements, as well as the  
17 PDMA requirements. And if you're  
18 dropping non controlled substances, then  
19 the answer would be you do not need to  
20 comply.

21 Q. And did -- did any of the  
22 programs that you designed drop sample --  
23 controlled substances into them?

24 A. Not that --

1     created and implemented policies to  
2     reduce the risk from perceived improper  
3     influence with healthcare professionals;  
4     is that right?

5             A.     That's part of what I did,  
6     yes.

7             Q.     Those policies are  
8     anti-kickback measures, right?

9             A.     They are not only  
10    anti-kickback measures. Again, as we  
11    discussed earlier, I did PDMA work for  
12    them as well and sample accountability  
13    work as well. They're not only  
14    anti-kickback statutes. There's false  
15    claims work.

16            Q.     How much of your time was --  
17    how much of your work at SmithKline  
18    related to PDMA's and sample -- and sample  
19    programs?

20            A.     Honestly, I spent at least a  
21    quarter of my time, if not more, on that.  
22    We had lots of investigations. We had  
23    lots of issues. We were putting in new  
24    systems, controls, writing new policies.

1 It was a substantial chunk of time.

2 Q. And these policies, these  
3 PDMA sample and sample policies that  
4 you've mentioned a few times, they focus  
5 on policies that govern providing samples  
6 that are given to physicians, right?

7 A. Correct. But we're -- but  
8 let's be clear. The kinds of controls  
9 that you're putting in around PDMA,  
10 non-controlled substances samples are  
11 substantially equivalent to what you're  
12 doing in controlled substances work.

13 You need to know the right  
14 people that you're dropping to. You need  
15 to account for your inventory. You need  
16 to look for suspicious behavior. You  
17 need to report suspicious behavior. You  
18 need to investigate red flags. You need  
19 to investigate noncompliance. You need  
20 to report noncompliance.

21 It's all, again, pretty much  
22 substantially similar to the world of  
23 controlled substances. You're just  
24 working with a different set of products.

1           Q.     But the policies focus on  
2     providing samples to physicians, that's  
3     true, correct?

4           A.     That -- that is true.

5           Q.     Now, SmithKline was --

6           A.     Or other -- other  
7     prescribers, so let's be clear. You can  
8     have nurse practitioners, or physician's  
9     assistants, who also have prescribing  
10    privileges. We could provide samples to  
11    them.

12          Q.     Thank you for that.  
13                 SmithKline was a  
14    pharmaceutical manufacturer, right?

15          A.     That is correct.

16          Q.     SmithKline was not a  
17    wholesale drug distributor?

18          A.     No, sir, it was not.

19          Q.     SmithKline did not  
20    manufacture opioids, correct?

21          A.     No.

22          Q.     SmithKline did not  
23    distribute opioids?

24          A.     To the best of my knowledge,

1     general on DEA compliance. On a specific  
2     compliance program and the elements  
3     necessary for a manufacturer, no, sir.

4                   MR. EPPICH: Let's go ahead  
5                   and take a break. Let's go off  
6                   the record.

7                   THE VIDEOGRAPHER: Going off  
8                   the record, 10:26 a.m.

9                   (Short break.)

10                  THE VIDEOGRAPHER: We are  
11                  back on the record at 10:44 a.m.

12     BY MR. EPPICH:

13                  Q. All right, Dr. Whitelaw, I  
14                  want to ask you a few more questions  
15                  about your work at C.R. Bard. And this  
16                  is -- we are back on Page 281 of your  
17                  report.

18                  A. Okay. Yes, of course. I'm  
19                  here.

20                  Q. Now, it says -- it says that  
21                  you served as Bard's first compliance  
22                  officer, post-settlement.

23                                 Is that accurate?

24                  A. Yes, that's an accurate

1 statement, sir.

2 Q. You then state you created  
3 and implemented Bard's original medical  
4 device compliance program to meet the  
5 requirements of the federal sentencing  
6 guidelines and Bard's plea agreement with  
7 the U.S. Department of Justice, and  
8 served as Bard's first compliance officer  
9 post-settlement.

10 Is that -- is that accurate?

11 A. That is all accurate, sir.

12 Q. So you oversaw the design  
13 and implementation of C.R. Bard's medical  
14 device compliance program, is that true?

15 A. I oversaw the implementation  
16 and design of their corporate compliance  
17 program, yes.

18 Q. And their -- their corporate  
19 compliance program was directed at  
20 medical devices, correct?

21 A. Their business was in  
22 medical devices, yes.

23 Q. When you designed C.R.  
24 Bard's medical compliance program, you

1 designed the program to comply -- comply  
2 with existing laws and regulations?

3 A. Yes.

4 Q. When you designed C.R.  
5 Bard's compliance program, you relied on  
6 the guidance from the relevant regulatory  
7 agencies available at the time, correct?

8 A. Well, that's part of what I  
9 relied on. I relied on an awful lot  
10 more. I also relied on the experience,  
11 again, this would have been preguidance  
12 from OIG and preguidance from department  
13 of justice in this space, so the only  
14 ones that had any real guidance were the  
15 defense industry at the time. So there  
16 were a lot of conversations I had with  
17 the folks at Boeing and other places to  
18 understand what they had gone through  
19 from a defense contracting compliance  
20 program perspective.

21 See, you have to remember  
22 this is the day when there was very  
23 little out there. This was new to the  
24 life sciences industry as a whole and the



1 company should have, and it gives the  
2 framework of what is -- are the standards  
3 around what is considered a good and  
4 effective compliance program.

5 Q. In a section entitled  
6 "Applicability of Chapter 8," the federal  
7 sentencing guidelines state, "This  
8 chapter applies to the sentencing of all  
9 organizations for felony and Class A  
10 misdemeanor offenses"?

11 A. That is what the title says,  
12 yes.

13 Q. The guidelines expressly  
14 state that they are to be used for  
15 criminal sentencing of organizations,  
16 correct?

17 A. That is certainly one of its  
18 purposes, yes.

19 Q. And you understand that this  
20 is a civil litigation, this -- this  
21 deposition is for a civil litigation,  
22 correct?

23 A. Clearly.

24 Q. It's not a criminal case?

1           A.       To my knowledge, no, it's  
2       not a criminal case.

3           Q.       And under the guideline's  
4       own applicability section, the guidelines  
5       are not applicable to this civil  
6       litigation.

7                        Would you agree?

8           MR. BOGLE:   Objection.

9           THE WITNESS:   No, sir, I  
10       would not agree. I fundamentally  
11       disagree with where you are going  
12       with this.

13                    The guidelines are the basic  
14       framework. They are where  
15       everybody starts. It's where  
16       industry starts. It's where  
17       compliance professionals start.  
18       It's where good companies start,  
19       et cetera.

20                    It is the baseline. It has  
21       become the de facto set of  
22       standards that you start with when  
23       you're looking at and assessing  
24       corporate compliance programs.

1                   Now, it happens to be  
2                   embodied in the section that has  
3                   that title as we just discussed,  
4                   but it is not just limited to  
5                   criminal actions. And doing so is  
6                   not a good read of where the world  
7                   of compliance is and the way we do  
8                   things. Because you use it.

9                   And by the way, if it were  
10                  only limited to criminal things,  
11                  then I would wonder why everybody  
12                  is running around out there and  
13                  putting in their own compliance  
14                  programs, trying to follow these  
15                  guidelines. It wouldn't make any  
16                  sense if you said it's only for  
17                  criminal.

18                 People are doing it because  
19                 it's good business. People are  
20                 doing it because it's a good --  
21                 it's effective in maintaining  
22                 compliance.

23                 So those standards, although  
24                 they are embodied in that section,

1           are actually the basis that we use  
2           day in and day out as consultants,  
3           compliance professionals, et  
4           cetera, to do our job.

5       BY MR. EPPICH:

6           Q.     Are you familiar with the  
7       2005 case of U.S. versus Booker?

8           A.     I am familiar with the case  
9       of U.S. versus Booker.

10          Q.     And it's true that in U.S.  
11       versus Booker, the United States Supreme  
12       Court held that applying these federal  
13       sentencing guidelines in a criminal  
14       context is unconstitutional, did it not?

15               MR. BOGLE: Object to form.

16               THE WITNESS: I believe  
17       that's an unfair reading of the  
18       standard. What they said is it  
19       couldn't be the only reason and be  
20       used.

21               A judge can consider the  
22       federal sentencing guidelines and  
23       sentencing organizations. It  
24       couldn't be the sole basis for

1                   sentencing organizations.

2       BY MR. EPPICH:

3                   Q.       So the court has the  
4       discretion whether or not to apply the  
5       federal sentencing guidelines, correct?

6                   MR. BOGLE:   Object to form.

7                   THE WITNESS:   In what  
8       context?   Are we talking just a  
9       criminal context, are we talking  
10      about a civil context?

11      BY MR. EPPICH:

12                  Q.       In a --

13                  A.       But in -- but in general, a  
14      court has discretion to use them like  
15      they use other standards, yes.

16                  Q.       And the -- let me strike  
17      that.

18                         Let me go ahead and turn to  
19      Page 9 of your report.

20                         On Page 9, actually, the  
21      middle of the page, sir, you discuss U.S.  
22      versus C.R. Bard, the case of U.S. versus  
23      C.R. Bard; is that correct?

24                  A.       I do reference it there,

1 programs do not reflect the most current  
2 thinking derived from experts across  
3 industries."

4 You also wrote that,  
5 correct?

6 A. Yes, I did.

7 Q. And then finally in the last  
8 paragraph on this page, and I'm looking  
9 at the last three lines of that  
10 paragraph, you wrote, before you were  
11 hired by the plaintiffs' counsel, that  
12 "government enforcement agencies must  
13 change their mindset and their own  
14 measures of success beyond the number and  
15 size of settlements."

16 You wrote that too, didn't  
17 you?

18 A. Yeah, I did write that.

19 Q. Now, these were your  
20 opinions before you were hired by the  
21 plaintiffs for this litigation, correct?

22 A. Those were my opinions as  
23 expressed in this article; yes, I wrote  
24 this article.

1           Q.       And now that you're the  
2       plaintiffs expert, you're offering the  
3       opposite opinion, about the usefulness of  
4       government guidances, settlements and  
5       other precedents --

6                   MR. BOGLE:   Object to form.

7                   THE WITNESS:   No, I'm not.

8                   No, I'm not.

9                   I am not.   You are missing  
10       the point.   The point of what I  
11       was saying was the fact that if  
12       you look at settlement agreements  
13       in general, they are tailored to  
14       specific conduct.   If you look at  
15       the corporate integrity agreements  
16       in particular is what I was  
17       speaking to, in life sciences, we  
18       are talking about specific forms  
19       of conduct they were attempting to  
20       address.

21                   We weren't talking about the  
22       overall ethics as a culture.   And  
23       there's a whole discussion going  
24       on in our -- in our business about

1           the role of ethics and the review  
2           of just basic compliance and where  
3           do those two fit, how do you put  
4           those two together, and how do you  
5           make a good compliance culture.

6                     The conversation I was  
7           having, or at least the opinions  
8           that I was expressing in here is  
9           that my belief was that OIG in  
10          particular needed to start  
11          thinking about the ethical  
12          component as much as they were  
13          thinking about the basic  
14          compliance component.

15                    So that's not inconsistent  
16          with the viewpoint that I've  
17          expressed in this report. In  
18          fact, it is incredibly consistent.

19       BY MR. EPPICH:

20                   Q.       You cite to this document in  
21          your CV, sir? Do you cite to what I've  
22          marked --

23                   A.       In my CV?

24                   Q.       -- as Exhibit 9 -- or 8?



1       Excuse me.

2               A.       In my CV or in my --

3               Q.       In your CV that's attached  
4       to your -- to your report, sir.

5               A.       Are you looking for the  
6       publications list or are you looking just  
7       for the basic CV? I'm trying to  
8       understand where you're looking.

9               Q.       I'm asking if you identified  
10       this particular article in the CV that  
11       you've attached to your expert report in  
12       this litigation, Exhibit 2? Your CV  
13       begins on Page 279.

14              A.       If it's not listed here, it  
15       was left out by inadvertence. But again  
16       I've written a lot over 30 years. I  
17       don't remember every single article I've  
18       written. I did try to make this as  
19       complete and thorough as I could possibly  
20       make it for you.

21                      MR. EPPICH: We've been  
22       going about an hour.

23                      THE WITNESS: Wait a minute.

24                      MR. EPPICH: I don't -- I

1           Asked and answered.

2                   THE WITNESS: If we just  
3           walk through it logically, the  
4           people who are supposed to be the  
5           gatekeepers are, in fact, being --  
6           are, in fact, being incentivized  
7           by the company. And better the  
8           company does, the better the  
9           bonuses, et cetera. So it's --  
10          it's an inherent conflict to the  
11          company. You have the gatekeepers  
12          in that -- in a difficult  
13          position. I didn't say it's --  
14          that's a conflict position.  
15          You're holding the company for  
16          your job.

17       BY MS. SWIFT:

18               Q.       Do you have any other basis  
19       or support for that opinion that you just  
20       articulated?

21               A.       I am not sure what you're  
22       looking for, Counsel.

23               Q.       Okay. We can move on.

24                       Do you understand -- strike

1       that.

2                       All right. In the eight  
3 paragraph in this section, is the last  
4 paragraph on Page 46, refers to your  
5 compliance maturity and program  
6 effectiveness scale.

7                       Do you see that?

8               A.       Yes, I see that.

9               Q.       That's the Figure 2 on Page  
10 43 that my colleague asked you about  
11 earlier today, correct?

12              A.       That is correct.

13              Q.       Figure 2 on page 43, the  
14 maturity scale, that's the model that you  
15 made up for figuring out where in its  
16 maturity level or life span a company is  
17 with respect to compliance. Is that a  
18 roughly fair statement?

19                      MR. BOGLE: Object to form.

20                      THE WITNESS: No, I don't  
21 think it's a fair statement. It's  
22 something -- you're characterizing  
23 it as something that I made up.  
24 No, it's something that is in

1           general use among compliance  
2           professionals and others out  
3           there.

4       BY MS. SWIFT:

5           Q.       You said that earlier today  
6           as well, that you knew of others who had  
7           used the compliance maturity scale. Who  
8           else has used it?

9           A.       I have seen it in use in my  
10          time in Deloitte. I've seen it used by  
11          PwC. I've seen it used by a variety of  
12          different consultants and companies, even  
13          some of my fellow colleagues when I was  
14          an inhouse compliance officer used it  
15          within their own organizations.

16          Q.       I believe you testified that  
17          you created the compliance maturity  
18          scale; is that correct?

19          A.       No, I testified that I  
20          created this diagram that's in this  
21          document, was what I created.

22          Q.       Okay. Have you ever seen  
23          the compliance maturity and program  
24          effectiveness scale used publicly

1 anywhere in the world?

2 MR. BOGLE: Object to form.

3 THE WITNESS: I'm assuming I  
4 can Google it and find it.

5 BY MS. SWIFT:

6 Q. We tried. We couldn't.  
7 Have you -- have you done that and seen  
8 it used publicly somewhere?

9 A. You know, actually I have.  
10 I actually was able to Google Google  
11 Images at one point, and it did come up.  
12 Not the exact same -- again, it's -- the  
13 compliance maturity model is usually  
14 adapted. Each individual consultant  
15 or -- does some adaptation. The words  
16 may be slightly different. But that  
17 curve that we are talking about, the  
18 basic four parameters, yeah, I've seen it  
19 before.

20 Q. I believe you testified  
21 you've seen it used by people at Deloitte  
22 and PwC; is that correct?

23 A. I've seen it from PwC. I  
24 have seen it from Deloitte, yes.

1 Q. Have you seen it anywhere  
2 else?

3 A. As I said, I seem to recall  
4 some of my colleagues inhouse at other  
5 companies using it, but I can't tell you  
6 which companies and when and where, no.

7 Q. You say in that paragraph on  
8 Page 46 that the two chain pharmacies are  
9 barely starting into the foundational  
10 level of the maturity scale, correct?

11 A. That's what I say.

12 Q. And if there were a remedial  
13 level, that's where they would be,  
14 correct?

15 A. That was my statement, yes.

16 Q. Okay. I understand that you  
17 don't have a scoring method or a point  
18 system for placing the pharmacies on your  
19 maturity scale. You said it today, it  
20 was more of a qualitative assessment. Is  
21 that right?

22 A. That's fair.

23 Q. Are both of the chain  
24 pharmacies that you looked at in the same

1 Q. The next section, 13.4.2,  
2 talks about codes of conduct, correct?

3 A. It does.

4 Q. You talk about a business  
5 ethics code and a pharmacy code, right?

6 A. Yes, I do.

7 Q. You understand that not all  
8 employees at Walgreens are pharmacists?

9 A. Yes, I do understand that.

10 Q. At Page 191 of the report  
11 you see -- you say -- this is at the  
12 beginning of the first full paragraph --  
13 "The maintenance of two separated and  
14 unlinked codes of conduct increases  
15 complexity and the likelihood that the  
16 two documents will become out of sync,"  
17 correct?

18 A. I did write that and say  
19 that.

20 Q. You're not saying that it's  
21 a violation of the Controlled Substances  
22 Act to have multiple codes of conduct  
23 that are out of sync with each other, are  
24 you, sir?

1 MR. BOGLE: Object to form.

2 THE WITNESS: No. What I'm  
3 saying is it is a problem from  
4 a -- from an effective compliance  
5 program standpoint to have  
6 multiple codes and policies that  
7 are out of sync with one another.

8 BY MS. SWIFT:

9 Q. It's also not a violation of  
10 the DEA's suspicious order monitoring  
11 program to have multiple codes of  
12 conduct, correct, sir?

13 MR. BOGLE: Object to form.

14 THE WITNESS: Again,  
15 Counselor, we're not just looking  
16 at whether or not there's a  
17 violation of the Controlled  
18 Substances Act. The work I was  
19 asked to do was look at an  
20 effective corporate and controlled  
21 substance compliance program from  
22 standards that a reasonable and  
23 prudent company would use. And  
24 one thing that reasonable and



1           prudent companies do is try to  
2           make sure they don't have policies  
3           and procedures that get out of  
4           sync because you have multiple  
5           different versions of a document.

6       BY MS. SWIFT:

7           Q.       Fair to say, then, that a  
8           lot of the complaints you have about my  
9           client are not violations of the  
10          Controlled Substances Act?

11                 MR. BOGLE: Object to form.  
12                 Misstates testimony.

13                 THE WITNESS: I don't think  
14                 that's what I said, Counselor. I  
15                 said my primary -- what I was  
16                 looking at, and particularly in  
17                 the case of this, are indicia of  
18                 not having an effective program.

19                 Multiple documents in  
20                 multiple different hands can get  
21                 out of sync. And this was an  
22                 example of just what can happen  
23                 when you -- when that occurs.

24       BY MS. SWIFT:

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE NORTHERN DISTRICT OF OHIO  
3           EASTERN DIVISION

4                   -   -   -

5  
6           IN RE:   NATIONAL                   :   HON. DAN A.  
7           PRESCRIPTION OPIATE           :   POLSTER  
8           LITIGATION                   :     
9   :   MDL NO. 2804  
10          APPLIES TO ALL CASES           :     
11   :   CASE NO.  
12   :   17-MD-2804  
13   :

14                   - HIGHLY CONFIDENTIAL -  
15          SUBJECT TO FURTHER CONFIDENTIALITY REVIEW  
16                   VOLUME II

17                   -   -   -

18                   May 17, 2019

19                   -   -   -

20                   Continued videotaped  
21          deposition of DR. SETH B. WHITELOW, taken  
22          pursuant to notice, was held at the  
23          offices of Golkow Litigation Services,  
24          One Liberty Place, 1650 Market Street,  
25          Philadelphia, Pennsylvania, beginning at  
26          8:31 a.m., on the above date, before  
27          Michelle L. Gray, a Registered  
28          Professional Reporter, Certified  
29          Shorthand Reporter, Certified Realtime  
30          Reporter, and Notary Public.

31                   -   -   -

32                   GOLKOW LITIGATION SERVICES  
33                   877.370.3377 ph | 917.591.5672 fax  
34                   deps@golkow.com

1     its pharmacy-level anti-diversion  
2     programs?

3             A.     No, I did not.

4             Q.     Okay. The model that you  
5     discuss here, have you ever, in all the  
6     times that you've used that model, found  
7     an SOM program to score above the  
8     foundational level?

9             MR. BOGLE: For clarity, are  
10     you talking about Figure 2? When  
11     you say model? I just want to  
12     make sure --

13             MR. HYNES: Yeah.

14             THE WITNESS: I don't know  
15     what model you're talking about.

16     BY MR. HYNES:

17             Q.     The -- yeah, Figure 2.  
18     Where -- the one in front of you there.  
19     This model right here.

20             A.     That model?

21             Q.     Yeah.

22             A.     And all the time that I've  
23     used it for an SOM?

24             Q.     Yeah.

1           A.       Applied to an SOM program  
2 alone?

3           Q.       Yes, have you ever found,  
4 when you applied it to a SOM program,  
5 have you found such a program to score  
6 above the foundational level?

7           A.       No, I have not.

8           Q.       Before you were engaged in  
9 this case, had you ever used this model  
10 to evaluate an SOM program?

11          A.       No, I had not. But it is a  
12 standard compliance maturity model that  
13 I've used to evaluate compliance  
14 programs.

15          Q.       But not an SOM program  
16 before you were --

17          A.       Not an SOM --

18          Q.       -- engaged in this case?

19          A.       -- program, per se.

20          Q.       I want to turn to --

21                   MR. BOGLE: Just wait until  
22 he finishes.

23 BY MR. HYNES:

24          Q.       -- CVS's distribution

1 business. You know that CVS is a  
2 national chain pharmacy, correct?

3 A. Yes, sir, I do.

4 Q. Okay. And I think you state  
5 in your report, it has 9,800 retail  
6 pharmacies. Page 159.

7 A. I believe that's --

8 Q. Approximately.

9 A. Approximately. That number  
10 rings a bell.

11 Q. I'm not trying to test you  
12 on that.

13 Are -- are you aware how  
14 many retail pharmacies CVS has in  
15 Cuyahoga and Summit Counties?

16 A. Not off the top -- the  
17 number? I don't have a hard number off  
18 the top of my head.

19 Q. Is that something you looked  
20 into when you were evaluating CVS's SOM  
21 program?

22 A. Again, I evaluated a lot of  
23 different things in the SOM program. And  
24 I may have looked into it. Again, I